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A Toast to the Good Life: Exploring the Regulation of Champagne

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I submit this paper in satisfaction of the course requirement.

ABSTRACT

France, in partnership with representatives of various Champagne Houses, crafted detailed rules pertaining to the production and sale of Champagne. These regulations aim to meet twin goals: protection of authentic Champagne producers and fulfillment of consumer expectations. The threats of penalty and certain market forces combine to ensure that wines labeled Champagne, sold in any bottle shop in the European Union, derive from the French region. Laws in the United States illustrate a more flexible system than both France and the European Union in general, allowing greater use of the Champagne label than those approved by certain French organizations. Examination of the different legal regimes related to the Champagne name highlights both distinct purposes of regulation and divergent historical experiences.

I. INTRODUCTION

The French jealously guard the word Champagne, protecting its use throughout the world to ensure that Champagne continues to invoke notions of quality and celebration. The mere mention of the word triggers images of luxury and festivity, all of which create a marketing scheme that France aims to both capture and retain. France strives to keep Champagne associated with the northern French wine-growing region and prevent the term from becoming a mere synonym for sparkling wine. Through various regulations and activities, the French exert both internal and external controls over the use of the word. Within France, rules ensure that wine produced in Champagne meets established standards of quality, creating consistent characteristics that emerge upon opening a bottle labeled as such. An exploration of internal control measures involves a look at the events that sparked the adoption of certain rules, the parties responsible for the formulation and enforcement of such rules, and an examination of specific regulations. France makes great efforts to capitalize on the Champagne name throughout the world and aims to ensure that the French wine region receives these benefits exclusively. Legal proceedings within the European Union highlight the extent to which France and the various establishments of the Champagne region pursue the protection of their interests. Finally, an overview of United States law on the matter demonstrates the operation of a less strict system and the potential for movement towards a system more in line with that of France.

This paper focuses on the rules designed to protect the Champagne name both within France and throughout the world, with the focus on the European Union and the United States. This paper does not discuss the adoption of the Champagne designation to sell other products, such as Champagne Mustard. Research reveals many questions regarding trademarks and intellectual property, but those concerns are outside the

scope of this work. Instead, this paper explores the underlying purposes of regulation and the efforts taken by the Champagne region and its representatives to defend the Champagne name.

CHAMPAGNE REGULATION WITHIN FRANCE

II.

A. History and Basic Elements

Within the Champagne region, detailed rules effectively dictate which products may bear the Champagne title. However, this heightened protection of Champagne did not always exist and sprung from the ill effects of leaving the wine region unregulated.

Prior to the adoption of regulations in the early twentieth century, fraudulent practices and shoddy quality ran rampant. The poor circumstances called for drastic action in the form of government control to salvage the Champagne reputation. A governing body emerged and though often subject to name changes, its initial basic purpose remains today: to ensure that wines called Champagne consistently meet definitive quality standards, both inside and outside of the region. Analysis of all relevant regulation sections would be far beyond the scope of this paper; instead, limited examples demonstrate the general rule structure and underlying principles. Finally, market forces compel compliance with quality standards and serve as a supplement to promulgated regulations.

A number of factors arose in the beginning of the twentieth century that prompted the development and adoption of rules governing wine production in Champagne. First, in the late 1800s, phylloxera, a plant louse that destroys vine roots, attacked grape vines throughout European Union, including the vines of Champagne.¹ Eventually, the vines in Europe were destroyed and American phylloxera-immune vines were planted in their place, effectively remedying the plague. However, the ravaging of the European Union vines had a tremendous effect on the livelihood of the vigneron.² Many vignerons faced bankruptcy from crop loss, sparking riot mobs that torched and ransacked wine establishments such as Ayala and Geldermann.³ Secondly, at the beginning of the phylloxera plague, demand for Champagne wines increased. To capitalize on this potential for profit and in light of the reduced supply of grapes within Champagne, businesses began importing wines from outside of Champagne. After introducing certain identifying characteristics into the imported wines, businesses would then market them as authentic Champagne, much to the disdain of Champagne grape growers.⁴ Eroding export markets due to the Great Depression exacerbated the discontent. Maurice Renoir, a grower-proprietor in the Champagne region explained that during this period, "...the wines, though splendid at their best, were woefully inconsistent, that some makers defrauded customers, and that some exploited their workers..."⁵

In this context of diseased vines, rioting, fraudulent production techniques, and a diminishing market, France took strenuous measures to restore glory to the Champagne title. In 1935, the French government established the Commission of Chalons, which included representatives of the Ministry of Agriculture, local growers, and champagne house representatives.⁶ The Commission enacted safeguards governing Champagne production, which were primarily rules designed to protect local traditions.⁷ During World War II, the Vichy

¹CYRIL RAY, BOLLINGER 68 (Peter Davies 1971).

²'Vignerons' refers to grape-growers.

³*Id.* at 78.

⁴*Id.* at 71.

⁵*Id.* at 69.

⁶MAGGIE MCNIE, CHAMPAGNE 91 (Faber and Faber 1999).

⁷*Id.*

government dissolved the Commission and replaced it with the Bureau National de Repartition des Vins de Champagne, which was subsequently eliminated and replaced with the Comité Interprofessionnel du Vin de Champagne (“CIVC”).⁸ To this day, the CIVC remains “empowered to regulate every aspect of the industry from viticulture through production to trade.”⁹

A second group monitors the use of the *appellation d’origine*, defined as, “a geographic denomination attached to a product that signifies its distinctive and renowned qualities.”¹⁰ Designations such as Champagne, Burgundy, and Bordeaux represent the work of the *appellation d’origine*. The *L’Institut national des appellations d’origine* sets standards for wine production, monitors the *appellations d’origines contrôlées* (“AOC”), and overlooks compliance.¹¹ The AOC combats fraud with respect to their appellations, a task that Lori E. Simon comments on in her article, *Appellations of Origin: The Continuing Controversy*. Simon states that, “One author points out that the first of these tasks is complete, while the second remains an ongoing process.”¹²

The French Maisons de Champagne (“Champagne Houses”) also defend the Champagne name. Since 1919, the Champagne Houses have had the statutory authority to represent French Champagne makers.¹³ Finally, the Institut National Des Appellations D’Origine (“INAO”)¹⁴ The INAO aims to prevent the misappropriation of French appellations d’origine throughout the world.¹⁵

⁸*Id.* at 92.

⁹*Id.*; The vine-growers and Champagne Houses that comprise the CIVC have the statutory authority to create and implement generally applicable rules. Their decisions are then approved by a Regional Prefect, which represents the French government.

¹⁰Lori E. Simon, *Appellations of Origin: The Continuing Controversy*, 5 NW. J. INT’L L. & BUS. 132, 136 (1983).

¹¹*Id.* at 145.

¹²*Id.*

¹³Alfred Phillip Knoll, *Federal Regulation of the Term Champagne*, 60 TMR 285, 287 (1970).

¹⁴Linda E. Prudhomme, *The Margarita Wars: Does the Popular Mixed Drink “Margarita” Qualify as Intellectual Property?*, 4 Sw. J. of L. & Trade Am. 109, footnote 303 (1997).

¹⁵Prudhomme, *supra* note 13, at footnote 303.

B. The CIVC: The Governing Body

Fundamentally, the CIVC seeks to ensure that if a consumer purchases a bottle labeled Champagne, the consumer can expect the wine to reflect traditional production methods and the presence of certain characteristics. The CIVC pursues these quality goals through rules articulating the production process. The regulations begin with grape pruning and extend all the way through corking and labeling. Wine-makers that stray from the detailed rules are barred from affixing Champagne on their wine label, preventing them from capitalizing on the market value that accompanies the word. When the Champagne term is misappropriated, it is considered *per se* illegal and all producers have a statutory right of recovery.¹⁶ A key responsibility of the CIVC is to for such violations. In a marketing booklet on the wines of Champagne, vignerons and Champagne houses point out that the key mission of the CIVC is “to defend and protect the exclusive nature of the appellation, whatever the commercial sector involved.”¹⁷ According to additional marketing material, legal procedures aim to, “progressively make the world admit that Champagne is the proper name for wines produced in the Champagne region and therefore, can neither be used nor associated with any other product, even though it may have a similar appearance or an equivalent prestige.”¹⁸

The structure of the CIVC and its specific objectives are designed to enhance the goals of the organization. The CIVC consists of six vine-growers and six merchants, each elected by members.¹⁹ All decisions of the committee require unanimous agreement.²⁰ The strongest forces of the CIVC are the Commissioner, the

¹⁶Simon, *supra* note 10, at 139.

¹⁷VIGNERONS ET MAISONS DE CHAMPAGNE, THE WINES OF CHAMPAGNE 10 (2001).

¹⁸UNION OF CHAMPAGNE HOUSES, CHAMPAGNE INTER-PROFESSIONAL ORGANISATIONS (February 2003), available at http://www.umc.fr/tradution/english/organisations_professionnelles/historique_civc_gb.htm.

¹⁹McNie, *supra* note 6, at 95.

²⁰*Id.*

President of the Vine-Growers and the President of the Merchants.²¹ The committee is funded by three sources: harvest revenues, bottle sales, and special taxes. In addition to creating quality standards and defending the Champagne name, the CIVC manages relationships between parties at the various levels of production – the vine-growers, the grape-sellers and the purchasers. Particularly, the CIVC is “the point at which the sometimes divergent interests of one group or another coalesce into a general conception of the Champagne community and its development.”²²

Through the CIVC, all sectors of the Champagne community cooperate to cultivate their common interests. The governing body curbs any hostility between parties that may damage the entire region, avoiding situations such as the 1911 vine-grower riots. Also, the committee explores techniques designed to improve grape growing, such as dealing with pests and foul weather. By pooling knowledge and resources, all Champagne Houses stand to gain from improvements that enhance the reputation of the region. Protecting and developing the Champagne market through initiatives such as education, certificates of origin, and legal proceedings is another important objective of the committee. The CIVC works to improve the quality of Champagne produced by the region as a whole, as opposed to relying on each establishment making and guarding individual improvements designed to outsell competitors. The CIVC, various governmental organizations, Champagne Houses, vine-growers, and grape sellers, maintain a united front against degradation of the Champagne title around the world.

C. Regulation of the Production Process

²¹ *Id.*

²² *Id.*

1. General Rules

Regulations obligate producers to use specific techniques, ensuring that all wines labeled Champagne are created through similar methods. The production of Champagne through the official method, the *Methode Champenoise*, is both time-consuming and expensive, creating tremendous incentives to cut quality in pursuit of profit. Wine-makers comply with CIVC standards because they want to be able to prominently display the word Champagne on their bottles. Consumers rely on these labels, primarily because, “...one can hold that the strict laws of *appellation* ensure that there is no such thing as a *bad* champagne...”²³ Though opinions may differ as to whether all proper champagnes are good, the market power of the designation remains significant, no matter the taste of the wine. Rules with respect to region boundaries, the second fermentation process, dosages, the use of the term ‘vintage’ and pink champagne highlight how regulations have targeted certain aspects of the production process. The regulations also show the problems that arise due to certain rules and how the issues may be avoided. Finally, label regulations illustrate how the law governs the final product to ensure consumer protection.

2. Grape Origination Rules

Rules mandate that all Champagne grapes are grown within the region and designate the specific areas where vines may be planted. The *la Champagne viticole*, the legally defined Champagne wine-growing region, was established in 1919 and is 34,500 hectares in size.²⁴ It is a chalky-soiled district located in Northern France

²³Ray, *supra* note 1, at 119.

²⁴*Id.* at 14.

and includes the towns of Reims and Epernay. Of the region, only 31,050 hectares are suitable for planting and, “as no grapes may be harvested for AOC wine until the vine is at least three years old, it has been calculated that there can never be more than 29,000 hectares in actual production at any given time.”²⁵ Only Chardonnay, Pinot Noir, and Pinot Meunier grapes grown within this district may be used to produce Champagne wines.²⁶ Consequently, there is a legal limit imposed on the amount of wine that the region may produce when operating at full capacity.

The legal ceiling imposed on the supply of Champagne increases the prestige of the wines, but also encourages fraudulent production practices both inside and outside the district. Within Champagne, houses may be tempted to use grapes imported from other regions in their wine, as occurred in the early twentieth century. Only through inspection and careful monitoring of production can the threat of imported grapes be assuaged. The CIVC recognizes this potential harm and as a result, “. . . there are stringently drawn safeguards against the fraudulent use of wine from other areas, and a [CIVC] to see that all regulations are strictly observed: even unfermented champagne must not be moved from one parish to another of the region without an official permit.”²⁷ Outside the region, other wine makers may be induced to call their wines Champagne to capitalize on the scarcity of the actual product. This poses a constant threat and is explored more fully below in the discussion on CIVC and Champagne house activities throughout the world.

Regulations ensure that wine-makers only produce the maximum quantity allowed by law from each hectare, avoiding overly tapping grape supplies at the expense of quality. Juice from grapes above the legal limits may be used to make brandy, so its value is not completely lost. However the CIVC must monitor Champagne producers to ensure that these rules are followed. Notably, “France has enacted a law saying that producers who exceed the highest permitted yield-per-acre (or *plafond limité de classement*) in any of their vineyard parcels, and don’t turn the excess wine into brandy, will lose controlled-appellation status for *all* of their

²⁵McNie, *supra* note 6, at 101.

²⁶Knoll, *supra* note 14, at 290.

²⁷Ray, *supra* note 1, at 87.

holdings.”²⁸ Potential loss of Champagne status for all wines fosters compliance with the quantities set forth by law.

3. Second Fermentation Requirements

Bubbles develop during the second fermentation, giving sparkling wine its distinct identity and making this a key element of the production process subject to intense regulation. After the first fermentation, the wine remains bottled and dead yeast cells breakdown, representing the essence of the second fermentation.²⁹ The law requires a fifteen-month second fermentation for non-vintage wines and a three-year fermentation for vintage wines.³⁰ The rules make sure that the wine has the time to develop the taste and the nose that one expects when sipping a glass of Champagne. More specifically, “This process, called yeast autolysis, releases volatile aromas, amino acids and proteins, all of which give the special ‘champagne’ aroma and flavor. It therefore follows that the longer the wine remains in contact with the yeast, the more developed the character. Many wine-makers do in fact leave even their non-vintage wines on the lees for about three years.”³¹ Authorities test the wine to determine if the second fermentation requirements have been fulfilled. The INAO carries out an analysis and a tasting of ‘acceptance’, before awarding a certificate of controlled origin.”³² Consumers legitimately expect a certain wine tasting experience when purchasing a bottle of Champagne and this rule aims to meet those expectations. The extent to which wine sits in House cellars

²⁸Randy Sheahan, *All Things Grape and Small*, THE QUARTERLY REVIEW OF WINES, February 2003; *available at* <http://www.qrw.com/grape.asp>.

²⁹McNie, *supra* note 6, at 75.

³⁰McNie, *supra* note 6, at 75.

³¹*Id.*; ‘resting on its lees’ is an informal name for yeast autolysis.

³²UNION OF CHAMPAGNE HOUSES, FROM VINES TO PLEASURE (February 2003) http://www.umc.fr/traduction/english/vignes_au_plaisir/methode.champenoise.gb.htm.

during the second fermentation, unable to be sold or consumed, makes this a very expensive rule to follow. INAO monitoring ensures that Champagne Houses spend the time and money to comply with second fermentation rules

D. Regulation of Label Content

1. Vintage versus Non-Vintage Designation

Authorities exert tremendous control over the terms and descriptive phrases that may appear on a wine label, beyond the word Champagne. For a House to label a wine ‘vintage’, numerous requirements must be met. First, the wine of a vintage Champagne must reach a certain natural alcohol level before the process of chaptalisation. This level is at least one percent higher than that required of non-vintage wines.³³ For the alcohol to develop to this higher level naturally, it must undergo longer fermentation. The earlier one may engage in chaptalisation, the faster required alcohol levels are reached and wines land on store shelves. Thus, significant inducements exist to chaptalize as soon as possible, mandating legal rules to ensure that producers do not prematurely add alcohol. Also, vintage wines must be aged for a longer period during the second fermentation than non-vintage wines.

Vintage wines are also subject to rules on blending and reserves. The wines of a vintage Champagne must consist only of grapes harvested in a single year, as opposed to a blend of different years, which is the norm for non-vintage wines. Additionally, at least twenty percent of the wines created each year must be

³³McNie, *supra* note 6, at 71; Chaptalisation refers to the addition of cane or beet sugar to the grape must. The purpose is to increase the alcohol level of the finished wine.

kept in reserve and may not be used as vintage wine. In subsequent years, the reserve becomes part of the blend of non-vintage wines.³⁴ The reserve requirement guarantees a minimum wine supply in times of high demand, curbing the temptation to compromise quality during popularity peaks. The reserve preserves well-made wines that may be used in later years. Skyrocketing growth in Champagne demand during the 1980s demonstrates the purpose of the reserve rule. Specifically, "...during the massive expansion of the champagne market in the 1980s, many makers jumped on the vintage bandwagon and produced lightweight, acidic and over-dosed wines for the seemingly voracious market, thus rendering the reputation of great champagne a great deal of harm."³⁵ By requiring reserves, the CIVC aims to avoid the circumstances of the 1980s, ensuring that even through the times of greatest demand, Champagne offers only the highest quality sparkling wines.

2. The Pink Champagne Label

Regulations surrounding the phrase 'Pink Champagne' aim to address the potential for fraud that accompanies an unstable product. Specifically, "Looking at its popularity peaks and troughs, it seems fair to say that whenever either heights of prosperity, frivolity, or both, dominate the social scene the pink fizz will become the drink."³⁶ Without a continuous stream of sales, producers limit their production of the wine. Minimal production creates the danger that in times of high demand, inferior production methods will be used to satisfy the quantity demanded for pink champagne. Consequently, rules prescribe the techniques

³⁴*Id.* 81

³⁵*Id.*

³⁶*Id.* at 83.

by which pink champagne may be produced and adopt its traditional hue. Within the European Union, the pink color must derive solely from grape skins, but many techniques are approved to extract the color from the grape skins.³⁷ Rules prohibit blending red and white wines to make pink champagne, except in the actual Champagne region. AOC and European Union rules permit blending in Champagne simply to protect a traditional practice.³⁸

E. Market Forces That Supplement Rules and Regulations

Multiple market forces compel Champagne producers to operate under the highest of standards and market demands, coupled with CIVC rules, provide a solid network of pressure on Champagne houses to create quality wines. Beyond the threat of legal repercussions, producers are encouraged to adhere to CIVC regulations simply to enhance the quality of their wines and their reputation worldwide. One example of market pressure concerns fermentation. Though wine-makers have set times they must age their wines during the fermentations, in practice, most age their wines for a longer time. Specifically, “The non-vintage blends are usually kept in the cellars for eighteen to twenty-four months, the vintage wines are aged from three to five years and the prestige wines from five to seven years or even longer. The wine-makers choice depends on the type of blend: Pinot ages more rapidly than Chardonnay but the latter is livelier and more suited to the style of wines that the Houses wish to market.”³⁹ A second illustration of the influence of market forces concerns wine sweetening. Wines must be labeled appropriately with respect to sweetness, but wine-makers are allowed to make their champagne as sweet as they wish through the dosage. The dosage,

³⁷ *Id.*

³⁸ *Id.*

³⁹ UNION OF CHAMPAGNE HOUSES, FROM VINES TO PLEASURE (February 2003), *available at* http://www.unc.fr/traduction/english/vignes_au_plaisir/methode_champenoise_gb.htm.

also referred to as liquoring, essentially involves adding some of the same wine sweetened with dissolved sugar to the mix.⁴⁰ Typically, Champagnes are drier than other wines, due to the chalky soil and the second fermentation process.⁴¹ The dosage may eliminate some of this dryness or add a sweeter taste to the wine. Another function of dosage is, “to mask the inadequacies of a thin wine, made perhaps from the cheapest grapes or from as many pressings as are legally permitted, or from both. *Dosage*, says M. Christian Bizot, ‘can cover a multitude of sins.’”⁴² Mr. Patrick Forbes, author of a book on the history of the Champagne, comments that, “In general it may be said that sweetening conceals the quality and masks the defects of a champagne; the really great ones are therefore seldom sweetened to any appreciable extent.”⁴³ Thus CIVC rules on dosage are often superfluous in light of efforts made by Champagne Houses to develop high quality wines up to market expectations.

An interest in creating a widely respected wine often drives the production techniques used by Champagne Houses. Maintaining a unique House flavor and reputation often compel numerous wine makers to go above and beyond the techniques set forth by the CIVC. The minimum standards generated by the CIVC typically target the sector of wine-makers that do not respond to the pressures of the market. These wine-makers require specific rules and the threat of punishment to keep their wines in line with established standards.

F. Potential Drawbacks Associated with French Champagne Rules

Rules operate to ensure exclusive use of the Champagne title, a goal that often raises concerns outside of the

⁴⁰Ray, *supra* note 1, at 106.

⁴¹*Id.*

⁴²*Id.*; M. Christian Bizot joined Bollinger in 1952 and served as the sixth president of company, beginning his term in 1978. He died in July of 2002. Randy Sheahan, *All Things Grape and Small*, THE QUARTERLY REVIEW OF WINES, February 2003; available at <http://www.qrw.com/grape.asp>.

⁴³Ray, *supra* note 1, at 107; PATRICK FORBES, CHAMPAGNE (Gollancz 1982) (1967).

French region. Blanket rules may appear overly possessive of the word Champagne. Primarily, the rules stifle individual house initiatives due to the threat of penalty, possibly curbing innovation in growth, labeling, and production techniques. Secondly, protecting quality to such an extent may maintain an artificial reputation of quality. For example, a vineyard may follow all rules of production, yet still produce a poor quality wine. However, the vineyard still receives the benefits and rewards associated with labeling their product as champagne. Particularly, “There is no doubt that at the very top level Champagne is unique in its style and elegance, but there are many wines which fall short of this greatness. They are certainly all made within AOC regulations, but often to the minimum standard laid down.”⁴⁴ This situation bars the market from weeding out products that do not deserve the Champagne name. Also, poor quality wines diminish the reputation of the fine sparkling wine houses whose bottles bear the same Champagne label. Price controls and tighter AOC rules may quell these problems, the adoption of which may enhance the French campaign for international protection of the Champagne designation.

III. EUROPEAN UNION RULES ON CHAMPAGNE

A. Labeling Rules

⁴⁴McNie, *supra* note 6, at 146.

Stringent legal standards enforced by the European Union bar the use of the term Champagne and relevant descriptive phrases unless authorized under French AOC standards.⁴⁵ Even if a product matches or even surpasses the quality standards of AOC approved wines, it must be actually AOC approved Champagne to bear the label. For example, wine from grapes grown outside of Champagne cannot be legally marketed as Champagne, no matter if produced by the *Methode Champenoise*. Liability for misappropriation of the Champagne name does not turn on whether a product directs sales away from true Champagne. Typically, “In such cases a defendant would not escape liability for use of the name ‘Champagne’ on a beverage which is not authentic French champagne by showing either that his product was as good as or better than the claimants’ or that he had not diverted any measurable sales from them.”⁴⁶

Descriptive terms used on sparkling wine labels may also be deceptive, warranting additional control over label content. For instance, sparkling wine labels may not indicate that the wine was created using the *Methode Champenoise*.⁴⁷ Advocate General Gulmann proposed to the court the grounds for limiting access to the term in *SMW Winzersekt GmbH v Land Rheinland-Pfalz*, a case exploring the use of *Methode Champenoise* on German sparkling wines.⁴⁸ Mr. Advocate General Gulmann stated, “The use of a delocalizing designation such as method, they argue, is not sufficient to prevent consumers, when faced with a product bearing the designation *methode champenoise*, from being misled as to the origin of the product, and, in any event, the designation is liable to create the impression that the inherent qualities of the product are on a par with those of champagne.”⁴⁹ Conceptually, the characteristics of a particular wine represent the soil in which the grapes were cultivated, the climate of the growing area and the care taken in cultivation, in addition to grape types and production processes. The phrase *Methode Champenoise* refers only to production methods and does not alert the consumer as to whether the other key elements of the wine are included. Mr. Advocated General Gulmann further elaborated that, “Although prudent consumers will be aware that the designation refers only to a method of production, there is a real risk that less well-informed consumers will believe, by reason of the designation, that the sparkling wine is of the same standard as champagne, quite irrespective of its actual quality.”⁵⁰

European Union rules prescribe additional detailed label requirements. Labels must indicate the brand or the original name of each House and say ‘France’.⁵¹ The content of residual sugar must be included, referring to the wine as extra-brut, brut nature, brut, extra-dry, sec, demi-sec and doux; these terms alert the customer as to the sweetness of the Champagne.⁵² Finally, labels need to point out the professional registration number designated by the CIVC for each producer and brand.⁵³

Strict European Union rules aim to maintain the exclusive nature of the Champagne term and protect customers from deception. Following a challenge of these rules, the Court of Justice of the European Communities articulated that, “...the Council was entitled to regard it as essential that the final consumer should have accurate information...and that the producer should not derive advantage, for his own product, from a reputation established for a similar product by producers from a different region.”⁵⁴ This rationale mirrors the reasons why France initially adopted regulations in the early twentieth century. Both the European Union rules and the French rules incorporate measures to preserve the Champagne reputation and safeguard consumers.

B. Liabilities, Remedies, and Civil Action History

The CIVC defends the Champagne name around the world through civil litigation, claiming that someone

⁵¹*Id.*

⁵²*Id.* ‘Extra-brut’ represents the driest Champagne available. Wines labeled ‘Doux’ are the sweetest. All other names fall within the spectrum between Extra-brut and Doux.

⁵³UNION OF CHAMPAGNE HOUSES, FROM VINES TO PLEASURE (February 2003), *available at* http://www.unc.fr/traduction/english/vignes_au_plaisir/methode_champenoise_gb.htm. (The CIVC sets professional registration numbers for each producer and brand. Two initials come before the numbers. The initials point to the type of person that produces and markets the wine. There are seven types of initials, including: “**NM** : négociant-manipulant (A House which make and sells Champagne; **RM** : récoltant-manipulant (a grower who produces and sells his own Champagne); **RC** : récoltant-coopérat (a grower whose wine is produced by a co-operative); **SR** : société de récoltants (a registered firm of growers); **CM** : coopérative de manipulation (a vinifying co-operative); **MA** : marque auxiliaire (auxiliary brand), marque d’achet (buyer’s own brand), or marque autorisée (authorised brand); **ND** : négociant-distribut (a negociant selling wine under his own name without making it).”)

has illegally procured the term to the detriment of true Champagne producers. Two English cases illustrate litigation efforts designed to protect the Champagne designation.

A case in the 1950s brought in Great Britain, *Bollinger v. Costa Brava*, paved the way for the protection of the Champagne designation throughout European Union.⁵⁵ *Bollinger* involved Perelada, a Spanish sparkling wine product labeled as “Spanish Champagne”. At time of *Bollinger*, Britain had not yet signed the Treaty of Rome, so French appellation law held no control over wine marketing in Great Britain. Anyone could employ wine designations regardless of the wine’s geographic origin or the relevant production techniques. Customers could walk into wine shops and purchase White Chianti and Spanish Chablis. The lack of label regulations meant that though a customer purchasing Australian Burgundy most likely expected a wine reminiscent of those produced in the French region of Burgundy, there was no legal guarantee that this would be the case. To combat this phenomenon and secure label protection, the CIVC and various Champagne Houses brought suit against the producers of Perelada, the “Spanish Champagne.” A first action in criminal court proved unsuccessful. However, a later civil suit brought the victory and set forth a standard for label protection and regulation. The civil case turned on one simple question:

“On the afternoon of 6 December the matter came to a head. The judge posed a hypothetical question. If some ignorant person order champagne, but says to the waiter that it seems expensive and is then offered Perelada as an alternative, would the waiter not add, ‘But of course that is not French champagne?’ Mr. Lawrence [counsel for champenois] grabbed his chance. ‘My Lord, if he said, “Not French champagne”, he would mean “It is not French champagne it is Spanish champagne, but whether you have French champagne or Spanish champagne it is still champagne.” This, in essence, was the case.’⁵⁶

Following judgment for the CIVIC and Champagne Houses, the owners of Perelada had forty-eight hours to eliminate Champagne references on beverage labels. The *Bollinger* case set a strong precedent, for from that point on, within the UK, commonwealth and any dependencies, champagne could be used only to refer to what came from the French region and had AOC approval.⁵⁷

The CIVC and Champagne Houses continue to bring civil claims against those that falsely procure the Champagne name. Generally, the parties assert that a defendant has taken a product, passed it off as Champagne, thus damaging the goodwill of legitimate Champagne Houses and the region. Harm to goodwill includes diluting the power of the Champagne name, blurring the well-regarded standards applied to Champagne wines, and eroding the unique nature of the wines.⁵⁸ A recent case, *Taittinger v. Allbev Ltd.*, demonstrates the application of a civil passing off claim.⁵⁹ *Taittinger* involved a lawsuit against producers of a non-alcoholic beverage sold in England named Elderflower Champagne.⁶⁰ The Court of Appeals in London held the defendant liable for passing off and the case prompted one judge to state that, “By parity of reasoning it seems to me no less obvious that erosion of the distinctiveness of the name champagne in this country is a form of damage to the goodwill of the business of the champagne houses.”⁶¹ A second judge noted that,

“The first plaintiffs’ reputation and goodwill in the description Champagne derive not only from the quality of their wine and its glamorous associations, but also from the very singularity and exclusiveness of the description, the absence of qualifying epithets and imitative descriptions. Any product which is not Champagne but is allowed to describe itself as such must inevitably, in my view, erode the singularity and exclusiveness of the description Champagne and so cause the first plaintiffs damage of an insidious but serious kind.”⁶²

The primary harm of the ‘Elderflower Champagne’ label harmed concerned the association of legitimate

⁵⁸Vine Products Ltd v MacKensie & Co Ltd, 1969 RPC 1 (Ch. 1969).

⁵⁹Taittinger v Allbev Ltd, 1994 All E.R. 75 (Ch. 1994).

⁶⁰Irvine, 1 WLR.

⁶¹*Id.* at footnote 35; *see also*, Vine Products Ltd v MacKensie & Co Ltd, 1969 RPC 1 (Ch. 1969)(The danger surrounded “‘blurring’ or ‘diluting’ of the plaintiff’s goodwill and references to ‘encroaching the reputation and goodwill’ or ‘erosion of distinctiveness’” as explored New Zealand cases).

Champagne with a product not up to AOC standards. Consequently, the court assessed damages against the defendant.

Both *Bollinger* and *Taittinger* secured the exclusive use of the Champagne name for the French region within Great Britain. Within the European Union, the threat of litigation has proven to be a powerful tool for curtailing the use of the term outside of the AOC sphere.

IV. UNITED STATES CHAMPAGNE REGULATION

A. United State Regulations and Administrative Structure

United States wine label regulations differ markedly from those of France and Europe in general. Current rules arose from regulations created in the early twentieth century and continue to reflect the underlying policies of the original rules. In 1934, the Department of Agriculture classified Champagne as a generic, stating that, “Since the word champagne has largely lost its geographic significance and become generic in character, naturally sparkling wine identical with champagne in respect to manufacturing process and composition, but made in sections other than the Champagne district of France, may be labeled as champagne if the name is directly and prominently qualified to show the geographic location where it is manufactured.”⁶³ Today, the laws afford Champagne the same treatment, though the United States now classifies Champagne as a semi-generic term. The classification allows anyone to label wine as Champagne, so long as the label includes the actual wine origin. Particularly, “Semi-generic designations may be used to designate wines

⁶³Knoll, *supra* note 14, at 288.

of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine. . .”⁶⁴ Thus a bottle of sparkling wine made in California may be marketed as ‘Champagne’, so long as the label also states ‘California’.

The newly created Alcohol and Tobacco Tax and Trade Bureau (“TTB”) regulates wine label content in the United States. Previously, the Bureau of Alcohol, Tobacco and Firearms made rules for wine labels and monitored compliance, but these responsibilities were designated to the TTB beginning in January of 2003 under the Homeland Security Act.⁶⁵ The TTB ensures proper grape variety representations and appellation designation.⁶⁶ To ensure compliance, TTB agents test wine through random sampling from stores throughout the United States, checking for wine contaminants and spoiling.⁶⁷ The TTB also monitors the inclusion of health statements on wine labels and the establishment of American Viticultural Areas (“AVA”).⁶⁸ The new administrative regime, with greater focus on wine regulation, offers the opportunity for more thorough monitoring of the industry

B. Historical Roots of Regulation

According to Kevin Zraly, founder and teacher at the Windows on the World wine school, “Some American

⁶⁴Simon, *supra* note 10, at footnote 46 to 48; *see* 27 C.F.R. § 4.24(a)(2), (b)(1)(1982).

⁶⁵Lynne Alley, New Federal Bureau Takes over Regulating Wine Industry, WINE SPECTATOR ONLINE (February 2003), available at <http://www.winespectator.com/Wine/Daily/News/0,1145,1969,00.html>.

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸*Id.*

producers have borrowed the name ‘champagne’ to put on the label of their sparkling wines. These cannot and should not be compared with Champagne from France.”⁶⁹ Zrally’s advice hinges on the fact that in the United States, wine regulation does not match the stringency of the French and European Union schemes. Historically, the United States has allowed a more flexible use of geographic designations. The current semi-generic classification of Champagne allows its use on sparkling wines not produced in the French region. The United States has continuously resisted efforts to tie itself to the stricter rules included in treaties such as the Lisbon Arrangement for the Protection of Appellations of Origin and the Madrid Arrangement for the Repression of False Indications of Origin.⁷⁰

Contrasting viewpoints regarding wine regulation as between France and the United States reflect both divergent goals and historical experiences. Both design rules to protect consumers and producers, but each country places different emphasis on each of the twin goals. While French wine laws aim to safeguard producers from improper free riding, United States law has generally focused on consumer protection.⁷¹ In 1935, at a hearing before the Ways and Means Committee of the House of Representatives, Joseph H. Choate Jr., former Director of the Federal Alcohol Control Administration, illuminated the on United States wine regulations. He articulated the following:

(T)hose regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labeling and advertising should be honest, straight forward and truthful. They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle.⁷²

This mindset conflicts with the French goal of supporting wine-makers, though an interest in accurate labeling

⁶⁹Zrally, *supra* note 46, at 150.

⁷⁰Simon, *supra* note 10, at 134.

⁷¹*Id.* at 135 (“Likewise, many nations in the debate pursue different ends. More specifically, United States trade law traditionally has been concerned with protecting the consumer from deception, whereas French law centers on the interests of the products or manufacturers and the improper use of their marks by other producers.”)

techniques drives the actions of both countries.

The different experiences of the United States and France also explain various regulation nuances. One author observed that the influence of immigration and the relatively young character of the United States has played a tremendous role in rule formulation. Specifically, “This culture is a mixture of elements brought to the United States from other nations. Immigrants from around the world came to the United States with their own customs and frequently adopted familiar names from their native countries for products and their locations.”⁷³ In comparison, French laws preserve the tradition of their winemaking regions and techniques that have been centuries in the making.

C. France and the Future of Wine Regulation in the United States

Future efforts by the CIVC and the Champagne Houses will most likely target the legal classification of Champagne in the United States and how this pans out in international treaties. At the very least, they seek to keep Champagne classified as a semi-generic. Notably, “When a product’s geographic name becomes accepted as signifying the type of product, rather than its geographic source, the name is considered generic and it becomes part of the public domain. There are no longer private rights to its use.”⁷⁴ At least at this point, under the semi-generic category, when a consumer purchases a bottle made in Napa Valley labeled ‘Champagne’, the label alerts the consumer that the wine originated in California. This protection would be lost by a generic categorization.

⁷³Simon, *supra* note 10, at 151.

⁷⁴*Id.* at 140.

As it seeks worldwide regulation of its own geographic locations, such as Napa and Sonoma, the United States may be more open towards protection of the word Champagne. In situations of reciprocal interests, the United States has granted special protection for certain geographic designations. For example, the North Atlantic Free Trade Agreement (“NAFTA”) bestowed legal recognition to Tequila at the urging of Mexico.⁷⁵ Only products made in Mexico and under the proper rules may be marketed as Tequila in the United States. Also, the United States conferred protected status to Roquefort cheese, a sheep’s milk blue-mold cheese. Only cheeses produced in Roquefort, France, may be labeled ‘Roquefort’ in the United States.⁷⁶ Potentially, given the proper circumstances, the protection afforded Tequila and Roquefort cheese could be extended to Champagne.

V. CONCLUSION

French wine rules protect grape-growers from exploitation, wine-makers from unfair competition, and champagne drinkers from deception.⁷⁷ Europe and the United States maintain very different laws governing Champagne, illustrating the variety of possibilities open to France for securing its interests. Given the efforts of the CIVC and the Champagne Houses, in addition to the multitude of French organizations designed to monitor wine quality, Champagne continues to signify high quality and luxury. In 1961, Madame

⁷⁵Prudhomme, *supra* note 13, at 135; North American Free Trade Agreement, Dec. 17, 1992, Annex 313, *32 I.L.M. 319*, Can.-Mex.-U.S. (“Canada and the United States shall recognize Tequila and Mezcal as distinctive products of Mexico. Accordingly, Canada and the United States shall not permit the sale of any product as Tequila or Mezcal, unless it has been manufactured in Mexico in accordance with the laws and regulations of Mexico governing the manufacture of Tequila and Mezcal.”)

⁷⁶Prudhomme, *supra* note 13, at 157; *See* *Community of Roquefort v. William Faehndrich, Inc.*, 198 F. Supp. 291, 292-293 (1961).

⁷⁷Ray, *supra* note 1, at 71.

Bollinger, director of one of the foremost Champagne Houses, commented with respect to the wine, “I drink it when I’m happy and when I’m sad. Sometimes I drink it when I’m alone. When I have company I consider it obligatory. I trifle with it if I’m not hungry and drink it when I am. Otherwise I never touch it - unless I’m thirsty.’⁷⁸ Wine-makers expend tremendous efforts to impress Mme. Bollinger’s attitude throughout the world, protecting the name and standards of Champagne. They pursue litigation, run extensive marketing campaigns, lobby for law changes and weave their interests into international treaties. Only time will tell if these efforts prove successful.

⁷⁸EDENCROFT FINE WINES, CHAMPAGNE BOLLINGER (2003), *available at* <http://www.edencroft.co.uk/champagne-9.htm>.